U.S. Environmental Protection Agency

Report of the Chief FOIA Officer to the U.S. Department of Justice

Submitted by Malcolm D. Jackson, Chief Information Officer and Chief FOIA Officer

March 13, 2012

US EPA Chief FOIA Officer Report

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I.   Steps Taken to Apply the Presumption of Openness

1. Did your agency hold an agency FOIA conference, or otherwise conduct training during this reporting period?

   EPA has developed a robust training program both for employees who handle FOIAs as a primary duty and for employees who require a general FOIA training. The Agency conducts monthly training sessions for its headquarters and regional FOIA contacts who handle FOIA requests assigned to their organization. EPA also sponsored a one-day conference on September 15, 2011, that was attended by approximately 250 attendees from nine (9) cabinet level departments. An additional 150 employees participated via conference call from numerous locations across the federal government. The conference offered several plenary sessions that focused on key court decisions -- Open Government and FOIA, eDiscovery tools; FOIA processing; and dispute resolution. The conference also featured various breakout sessions with one session focusing on "Understanding and responding to requests for Controlled Unclassified Information (CUI)". The conference also featured a "FOIA Requester Forum" which provided a platform for NGO views and has become a regular offering at EPA FOIA conferences. Additional training sessions were offered to smaller audiences during the year at headquarters and in the Agency's regional offices.

2. Did your FOIA professionals attend any FOIA training, such as that provided by the Department of Justice?

   Yes. In addition to the training previously mentioned, EPA's National FOIA Officer and the Agency's Chief FOIA Officer attended Chief FOIA Officers' meetings and IT Workgroup meetings sponsored by the Department of Justice. EPA FOIA professionals also attended training offered by the American Society of Access Professionals and DOJ.

3. Did your agency make any discretionary releases of otherwise exempt information?

   Yes. EPA is committed to making discretionary releases whenever possible. EPA reviews all potential withholdings with a presumption of openness and releases all records unless the release would harm an interest protected by one of the statutory exemptions or if the disclosure is prohibited by law.

4. What exemptions would have covered the information that was released as a matter of discretion?

   Exemptions 2, 5, 7 and 9.

5. Describe your agency's process to review records to determine whether discretionary releases are possible.

   Records are initially reviewed by the subject matter expert with input from the FOIA Officer, when requested. EPA reviews all responsive records with an eye toward discretionary releases and makes such releases whenever possible. Section 2.104(h) of the Agency's FOIA regulations requires that a management official approve the withholding of Agency records from public disclosure.

6. Describe any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied.

   All records are reviewed with a presumption of disclosure. In fact, in FY11 EPA only withheld records, or parts of records, in 7% of all FOIA responses. Furthermore, in matters under appeal, records, or parts of records previously withheld, are reviewed with a presumption of disclosure. At monthly meetings with FOIA Officers and FOIA Coordinators, the National FOIA Officer includes an openness discussion to ensure these key FOIA employees understand and review records with a presumption of disclosure.

7. Did your agency have an increase in the number of responses where records were released in full?

   Yes. EPA increased the number of full grants by approximately 20% over FY10.

8. Did your agency have an increase in the number of responses where records were released in part?

   Yes. EPA increased its number of partial releases by approximately 10% over FY10.

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II.   Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests

1. Do FOIA professionals within your agency have sufficient IT support?

   Yes.

2. Is there regular interaction between agency FOIA professionals and the Chief FOIA Officer?

   Yes. EPA's Chief FOIA Officer meets with the Agency FOIA Officer and other FOIA professionals.

3. Do your FOIA professionals work with your agency's Open Government Team?

   EPA's National FOIA Program Office and its Open Government Project Management Office are in the same organization and report to the same senior leader. The National FOIA Officer and FOIA staff actively participate on the Open Government Directive Workgroup. FOIA activities are regularly included in EPA's quarterly Open Government Directive reporting. The FOIA Module, the Agency's replacement IT system, is the Agency's Open Government flagship project in its OpenGov 2.0 outline. http://www.epa.gov/open/EPAOpenGovOutline2012_02_13.pdf .

4. Describe the steps your agency has taken to assess whether adequate staffing is being devoted to FOIA administration.

   In FY 2010, EPA's Deputy Administrator requested an examination of EPA's administration of FOIA and supporting processes to determine if changes were needed to increase openness, transparency and accountability. The workgroup convened to conduct the examination submitted twenty-two recommendations to the Deputy Administrator in FY 2011, which included 1) the need to assess whether adequate staffing is being allocated to FOIA administration and 2) whether FOIA staff has the knowledge, skills, and abilities to perform their FOIA-related duties. The Agency will begin addressing these findings in

FY12. See FOIA Workgroup Report at
http://www.epa.gov/foia/docs/FOIA_Workgroup_Report.pdf .

5. Describe any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively.

The Deputy Administrator's FOIA Workgroup also examined processes and systems that support the Agency's administration of its FOIA responsibilities and identified opportunities to improve their effectiveness and efficiency.   In addition to the twenty-two recommendations accepted by the Deputy Administrator to improve EPA's FOIA system, the Agency FOIA Officer holds monthly meetings with the ten regional FOIA Offices using web conferencing and holds face-face meetings with headquarters FOIA staff. The meetings provide opportunities to discuss FOIA policies, procedures, and processes. They also provide `an opportunity to provide direction and guidance, as appropriate. The Office of General Counsel and the National FOIA Staff collaborate to provide topical trainings to these groups as the need is identified.

III.   Steps Taken to Increase Proactive Disclosures

1. Has your agency added new material to your website since last year?

EPA adds new material to its FOIA website on a regular basis. Of particular interest are materials relating to the 1) Open Government Directive; 2) Deep Water Horizon Oil spill; 3) FOIA Dashboard; 4) fee waivers granted and 5) the FOIA request status report.

2. Provide examples of the records, datasets, videos, etc, that have been posted this past year.

EPA has one of the most robust records and data set posting programs among federal websites. For example, data relating to the Deep Water Horizon Oil spill and mountaintop mining was posted in 2011. Further, EPA routinely provides new data sets to DATA.gov. In 2011, EPA supplied 83 data sets and tools catalogs to DATA.gov. http://www.data.gov/rawtoolspermonth/agency/4/0/catalog/raw_tools/last12/page/1/count/1 00#data

3. Describe the system your agency uses to routinely identify records that are appropriate for posting.

   EPA has policies and procedures for identifying and posting information to the web. Web managers, internet coordinators, content managers and others identify, approve and post information to the Agency's Web. EPA's OneEPA Web Project team is establishing new processes that unify and bring consistency to the way EPA releases information across all its components including a new governance structure to guide the proactive identification of information the public seeks and publishing it online via epa.gov, social media websites and by other means.

4. Beyond posting new material, is your agency taking steps to make the information more useful to the public, especially to the community of individuals who regularly access your agency's website, such as soliciting feedback on the content and presentation of the posted material, improving search capabilities, providing explanatory material, etc.?

   Yes. EPA's Administrator leads the Agency's effort to utilize social media to disseminate information and solicit feedback from the public. Organizations across the Agency use Facebook, Twitter and other social media platforms including EPA's blog, Greenversations (http://blog.epa.gov/blog/), to better connect with the public. The Agency now uses the Google search engine on its web pages to improve search capabilities.

5. Describe any other steps taken to increase proactive disclosures at your agency.

   EPA continues to review records with an eye toward proactive disclose. When deployed, the Agency's new FOIA system, the FOIA Module, will facilitate proactive disclosure by allowing partner agencies to look at the subject of FOIA requests holistically to identify trends – making it easier to proactively disclose information of interest to the public.

IV. Steps Taken to Greater Utilize Technology

Electronic receipt of FOIA requests:

1. Can FOIA requests be made electronically to your agency?

   Yes.

2. If your agency processes requests on a decentralized basis, do all components of your agency receive requests electronically?

   Yes.

Online tracking of FOIA requests:

3. Can a FOIA requester track the status of his/her request electronically?

   Yes. The Agency posts the status of all FOIA requests on its FOIA Website.

4. If not, is your agency taking steps to establish this capability?

   Not applicable.

Use of technology to facilitate processing of requests:

5. Beyond using technology to redact documents, is your agency taking steps to utilize more advanced technology to facilitate overall FOIA efficiency, such as improving record search capabilities, utilizing document sharing platforms for consultations and referrals, or employing software that can sort and de-duplicate documents?

   Yes.

6. If so, describe the technological improvements being made.

    EPA is collaborating with other Agencies to develop an end-to-end FOIA solution, which will allow the public to electronically submit, track and search a repository of previously released records before submitting a FOIA request.   Participating agencies will be able to electronically manage their FOIA processes in addition to communicating on consultations and referrals in the system. EPA is also deploying a suite of tools that will be integrated with the FOIA Module, allowing for electronic search, de-duplication and redaction of repository records and enhancing the Agency's ability to streamline and expedite processing activities for voluminous requests. (See discussion of FOIA Module under Spotlight on Success.)

V.   Steps Taken to Improve Timeliness in Responding to Requests and Reduce Backlogs

1. Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested. If your agency does not utilize a separate track for processing simple requests, answer the question below using the figure provided in your report for your non-expedited requests.

    a. Does your agency utilize a separate track for simple requests?

        Yes.

    b. If so, for your agency overall, for Fiscal Year 2011, was the average number of days to process simple requests twenty working days or fewer?

        No.

    c. If your agency does not track simple requests separately, was the average number of days to process non-expedited requests twenty working days or fewer?

       Not applicable.

2. Sections XII.D.(2) and XII.E.(2) of your agency's Annual FOIA Report, entitled "Comparison of Numbers of Requests/Appeals from Previous and Current Annual Report – Backlogged Requests/Appeals," show the numbers of any backlog of pending requests or pending appeals from Fiscal Year 2011 as compared to Fiscal Year 2010. You should refer to those numbers when completing this section of your Chief FOIA Officer Report. In addition, Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," and Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," from both Fiscal Year 2010 and Fiscal Year 2011 should be used for this section.

    a. If your agency had a backlog of requests at the close of Fiscal Year 2011, did that backlog decrease as compared with Fiscal Year 2010?

       Yes. The number of overdue requests was reduced from 329 to 326.

    b. If your agency had a backlog of administrative appeals in Fiscal Year 2011, did that backlog decrease as compared to Fiscal Year 2010?

       Yes. The number of overdue appeals was reduced from 77 to 64.

    c. In Fiscal Year 2011, did your agency close the ten oldest requests that were pending as of the end of Fiscal Year 2010?

       No. The Agency was unable to accomplish this task in FY11 due to the scope and complexity of the ten oldest requests. However, EPA has placed special emphasis on closing them by the end of FY12.

    d. In Fiscal Year 2011, did your agency close the ten oldest administrative appeals that were pending as of the end of Fiscal Year 2010?

No. The Agency was unable to accomplish this task due to the complexity of the appeals and limited resources. However, EPA has placed special emphasis on closing them by the end of FY12.

3. If you answered "no" to any of the above questions, describe why that has occurred. In doing so, answer the following questions then include any additional explanation:

   a. Was the lack of a reduction in the request backlog a result of an increase in the number of incoming requests?

      Not applicable. The backlog was reduced.

   b. Was the lack of a reduction in the request backlog caused by a loss of staff?

      Not applicable. The backlog was reduced.

   c. Was the lack of a reduction in the request backlog caused by an increase in the complexity of the requests received?

      Not applicable. The backlog was reduced.

   d. What other causes, if any, contributed to the lack of a decrease in the request backlog?

      Not applicable. The backlog was reduced.

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Administrative Appeal Backlog:

a. Was the lack of a reduction in the backlog of administrative appeals a result of an increase in the number of incoming appeals?

   Not applicable.   The backlog was reduced.

b. Was the lack of a reduction in the appeal backlog caused by a loss of staff?

   Not applicable. The backlog was reduced.

c. Was the lack of a reduction in the appeal backlog caused by an increase in the complexity of the appeals received?

   Not applicable. The backlog was reduced.

d. What other causes, if any, contributed to the lack of a decrease in the appeal backlog?

   Not applicable. The backlog was reduced.

All agencies should strive to both reduce any existing backlogs or requests and appeals and to improve their timeliness in responding to requests and appeals. Describe the steps your agency is taking to make improvements in those areas. In doing so, answer the following questions and then also includes any other steps being taken to reduce backlogs and to improve timeliness.

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1. Does your agency routinely set goals and monitor the progress of your FOIA caseload?

   Yes. EPA monitors the status of requests on our FOIA dashboard, to which all FOIA Officers and Coordinators have access. One of the recommendations of the Deputy Administrator's FOIA Workgroup is to provide EPA senior leaders with periodic reports of the status of requests under their purview and request that they allocate sufficient resources to reduce their backlogs. This recommendation will be implemented in FY12.

2. Has your agency increased its FOIA staffing?

   No.

3. Has your agency made IT improvements to increase timeliness?

   Yes. EPA deployed a suite of tools that will be available to support FOIA business processes, including electronic search, de-duplication and redaction. Additional IT improvements are discussed in the section Spotlight On Success of this report concerning the FOIA Module.

4. If your agency receives consultations from other agencies, has your agency taken steps to improve the efficiency of the handling of such consultations, such as utilizing IT to share the documents, or establishing guidelines or agreements with other agencies on the handling of particular information to speed up or eliminate the need for consultations?

   Yes. EPA tracks all consultations in its tracking system. The new FOIA Module will allow for the electronic transfer of records for consultations and referrals between Agencies.

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Use of FOIA's Law Enforcement "Exclusions"

1. Did your agency invoke a statutory exclusion during Fiscal Year 2011?

   Yes.

2. If so, what is the total number of times exclusions were invoked?

   Exclusion used three times.

Spotlight on Success

EPA, the Office of Government Information Services (NARA) and the Department of Commerce are jointly developing a FOIA Module that expands transparency and increases public access to information for the partner agencies. The Module will support the public's ability to submit FOIA requests, track the progress of requests, and search and access previously released FOIA responses in the system. For agencies, the Module will streamline and lower the costs of FOIA processing activities as well as provide an electronic records repository (compliant with the DOD 5015.2 standard); automatically generate the annual FOIA report; support the referral and transfer of FOIA requests and responsive documents and facilitate other processing needs. The Module is scheduled to be deployed in late FY12.